

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:99-MJ-210-BR
No. 5:10-CV-222-BR

By order filed 17 June 2010, this court dismissed respondent's pro se motion to vacate his commitment under 28 U.S.C. § 2255 on the grounds that respondent "is not a "prisoner in custody under sentence of a court" for the purposes of 28 U.S.C. § 2255 and therefore is not entitled to bring a motion under that statute. (6/17/10 Order at 2.) Respondent filed notice of appeal in the Fourth Circuit, which has "remanded [the case] to the district court for the limited purpose of permitting the district court to supplement the record with an order granting or denying a certificate of appealability" pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases.

United States v. Mair, No. 10-6884 (4th Cir.), 6/29/10 Order at 2.

The relevant statute provides that “[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court finds that respondent has not made such a showing, and declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong) (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

This 7 July 2010.

W. Earl Britt
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Senior U.S. District Judge